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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1033

LINDA Mc INNIS, a minor, by **CLOTEE Mc INNIS**, her mother and next friend, **MATTHEW V. BOWDEN**, a minor, by **MRS. FLORENCE JOHNSON**, his mother and next friend, **LAVERN SMITH**, a minor, by **BERNICE SMITH**, his mother and next friend, **KIMBERLY RAE COBLER**, a minor, by **RALPH COBLER**, her father and next friend, **MARK FIELDS**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **WILLIAM ALEXANDER**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **VIRGINIA RUTH SCRUGGS**, a minor, and **MRS. VIRGINIA SCRUGGS**, her mother and next friend, all suing as individuals and as representatives of persons similarly situated, and, Concerned Parents and People of the West Side, suing in behalf of the members of the class,

Plaintiffs-Appellants,

vs.

RICHARD B. OGILVIE, Governor of the State of Illinois, RAY PAGE, Superintendent of Public Instruction of the State of Illinois, ADLAI E. STEVENSON III, Treasurer of the State of Illinois, MICHAEL J. HOWLETT, Auditor of the State of Illinois,

Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division

MOTION TO AFFIRM

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INDEX

	Page
Motion to Affirm	1
The Issues Presented	2
Statement of the Case	2
Argument:	
I—The Method Of Financing Public Education In the State of Illinois does Not Violate The Equal Protection or Due Process Clauses Of The Fourteenth Amendment Of The United States Constitution.	7
II—The Controversy Is Not Justiciable.	8
Conclusion	10

Cases and Statutes Cited

Hess v. *Mulaney*, 213 F. 2d 635-640 (1954)	9
LeBeauf v. *State Bd. of Education of La.*, 244 F. Supp. 256, 260 (1965)	9
McGowan v. *Maryland*, 366 U.S. 420 (1961)	8
Metropolis Theatre Co. v. *Chicago*, 228 U.S. 61, 69-70 (1913)	8
Williamson v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955)	7
McInnis v. *Shapiro*, 293 F. Supp. 327, 334 (1968)	8

Ill. Rev. Stat. (1967), ch. 122, Secs. 17-1 *et seq.*, 18-1 *et seq.*, 34-1 *et seq.* 3
Sec. 14-A 5, 6
Sec. 14-B 6
Sec. 17-2 3
Sec. 18-3-18-7 4
Sec. 19-1, 34-22 4
Sec. 18-8, 18-12 *et seq.* 5

Art. IX, Sec. 12, Constitution of Illinois 4

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MOTION TO AFFIRM

Appellees Richard B. Ogilvie, Governor of the State of Illinois, Ray Page, Superintendent of Public Instruction of the State of Illinois, Adlai E. Stevenson III, Treasurer of the State of Illinois, and Michael J. Howlett, Auditor of the State of Illinois, pursuant to Rule 16 of the Revised Rules of the United States Supreme Court move that the final judgment and decree of the District Court be affirmed on the ground that the decision of the Federal District Court for the Northern District of Illinois is clearly correct and therefore it is manifest that no question so substantial as to warrant further argument is raised.

THE ISSUES PRESENTED

1) Does the method of financing public education in the State of Illinois as presently provided for by the laws of the said State violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution?

2) Is the controversy justiciable?

STATEMENT OF THE CASE

The Illinois General Assembly in fulfilling its Constitutional obligation to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education": (1) delegates to the local school districts authority to raise funds by levying an annual tax for educational and building purposes upon all property at its full value as equalized or assessed by the Illinois Department of Revenue; (2) authorizes school districts to issue, subject to approval at a referendum, bonds for purchasing, building, repairing schools and school property; and (3) provides for

a Common School Fund upon which the local districts may make claims to supplement educational expenditures. Ch. 122, Sec. 17-1 *et. seq.*; 18-1 *et. seq.*; 19-1 *et. seq.*; 34-1 *et. seq.* Ill. Rev. Stat. (1967).

LOCAL EFFORT

The State of Illinois limits tax rates that may be imposed for educational and school building purposes. Additional tax levies for educational purposes may be authorized by referendum but the total levies for educational purposes may not exceed 2% for districts maintaining grades 1-8 or 9-12, 4% for districts maintaining grades 1-12 and 2.01% for the Chicago Board of Education upon the cash value of property as assessed or equalized by the Department of Revenue. (Ch. 122, Secs. 17-3, 34-54, Ill. Rev. Stat. (1967)). School districts other than Chicago may also levy additional funds: (1) for capital improvements; and (2) to defray transportation and summer school expenses. Ch. 122, Sec. 17-2, Ill. Rev. Stat. (1967).

The local property tax rate for school purposes is the quotient of the annual school budget as proposed by the local boards and the assessed valuation of property within the district as assessed by the local county assessors and equalized by the Department of Revenue. If county valuations do not meet the estimated valuations of the Department of Revenue, an equalization multiplier is applied to adjust the valuations. The quotient of the school budget and the equalized valuation multiplied by $100 is the tax rate per $100 of equalized or assessed valuation.

BONDS

School districts are permitted to issue bonds for capital improvements and additions when authorized by a local referendum. The interest payable is limited according to the size of the school district. Districts may also issue bonds to refund an existing indebtedness, to provide for exhibition facilities and a working cash fund. However, the amount of bonds outstanding may never exceed 5% of the assessed valuation of taxable property within any local unit of government. Art. IX, Sec. 12. Ill. Cons.; Ch. 122, Sec. 19-1, 34-22, *et. seq.*, Ill. Rev. Stat. (1967).

COMMON SCHOOL FUND

The state through a Common School Fund pays claims to school districts as flat grants and equalization quotas after disbursements for: (1) tuition of children in orphanages and children's homes, veterans' hospitals or military encampment areas or in state housing units; (2) tax equivalent grants to districts where state institutions are located; (3) compensation of county superintendents and assistants; (4) supervisory expense fund; and (5) payments to the teachers' retirement system (outside of Chicago). Ch. 122, Sec. 18-3 through 18-7, Ill. Rev. Stat. (1967).

Each school district receives a flat grant for each pupil in average daily attendance. The district receives $47 for each pupil in kindergarten and elementary school in average daily attendance and $54.05 for each pupil in high school in average daily attendance. The state through an equalization plan guarantees a sum sufficient to produce $400 for each student in average daily attendance when aggregated with the local levy produced

by a minimum qualifying tax and the flat grant. This sum is paid to each qualifying school district which demonstrates a quality educational program. Ch. 122, Sec. 18-8, Ill. Rev. Stat. (1967).

The minimum qualifying tax depends on the type of school districts, e. g., unit or high school only. The qualifying tax encourages the local districts to make a major effort in financing its school programs.

The financial needs of most school districts exceed $400 per pupil, consequently the tax rates generally exceed the rate necessary to qualify for equalization. Additional levies are raised by referenda requesting an increase in the rate for educational purposes.

Claims for state aid are submitted by the school boards of each district to the county superintendents of schools who in turn certifies the claims to the Superintendent of Public Instruction. Ch. 122 Sec. 18-12 *et. seq.* Ill. Rev. Stat. (1967).

SPECIAL EDUCATIONAL FACILITIES

The General Assembly appropriates funds for special educational facilities for handicapped children (either physically, mentally or both), maladjusted children and speech defective children. Scholarships and grants are also available to persons interested in working with handicapped children. Professional personnel such as social workers and psychologists are assigned to these Facilities and paid out of special funds. Ch. 122, Sec. 14-A, Ill. Rev. Stat. (1967).

OTHER PROGRAMS

The state also has promulgated special programs for gifted and educationally disadvantaged children. Ch. 122, Secs. 14-A, 14-B, Ill. Rev. Stat. (1967). Funding of the program for educationally disadvantaged children is through participation in the Elementary and Secondary Education Act of 1965. (ESEA). P.L. 89-10; 20 U.S.C. Sec. 236 *et seq.* Financial assistance to local school districts for the education of children in low income areas is provided by Title I of ESEA on the basis of the number of children in families with annual income below $2,000 or above $2,000 with participation in Aid to Dependent Children programs; Title II provides grants for the acquisition of school library resources, textbooks and other printed and published material; Title III provides grants to local public school districts to finance supplemental educational centers and to enrich experiences and opportunities for elementary and secondary students.

ARGUMENT

I.

THE METHOD OF FINANCING PUBLIC EDUCATION IN THE STATE OF ILLINOIS DOES NOT VIOLATE THE EQUAL PROTECTION OR DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The two basic features of the Illinois school financing scheme are (1) delegation of authority to local school districts to raise funds by levying an annual tax upon all property within the district, and (2) creation of a common school fund upon which the districts may make plans to supplement for educational expenditures.

At present, the Illinois State Legislature has determined that a minimum of $400 per pupil is the foundation level necessary to provide "a good common school education." The thrust of plaintiffs' complaint is that this minimum is too low. Plaintiffs concede that it is not necessary that the dollar expenditure for each pupil need be the same in order to comply with constitutional requirements. It is the range of the disparity between the pupil expenditures that exists between the various districts of which plaintiffs complain. We submit that this is a question for the Legislature of the State of Illinois to determine, not a question for the courts to decide. Disparity alone does not amount to an "invidious discrimination". [*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955)]. Disparities and differences in treatment only run afoul the Constitution when the state statute can be said to reflect no rational policy. [*Metropolis Theatre*

Co. v. *Chicago,* 228 U.S. 61, 69-70, (1913); *McGowan* v. *Maryland,* 366 U.S. 420 (1961)]. As the court below noted, the Illinois Legislature has been constantly upgrading the quality of education in Illinois. *McInnis* v. *Shapiro,* [293 F. Supp. 327, 334, (1968)]. The disparity of which plaintiffs complain is constantly diminishing as the foundation level per pupil is increased and as the school districts are consolidated. The fact that alternatives to the present scheme may exist does not in itself render the present system unconstitutional. In *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487-88 (1955), this Court said:

> ". . . But that the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."

In conceding that the per pupil expenditure need not be identical, the plaintiffs thereby concede that the proper and only remedy available to them is to resort to the Legislature to request still further reductions in the disparities that exist. The amended complaint of the plaintiffs states no cause of action and seeks no remedy which the courts can afford.

II.

THE CONTROVERSY IS NOT JUSTICIABLE.

Plaintiffs seek to void the method of raising and disbursing funds for school purposes adopted by the Illinois Legislature. The Legislature has determined that the residents of each school district can best determine the educational needs of the children in their district. They are best able to determine how many dollars per pupil

are necessary to be spent in their area to meet the educational needs of their children. The Legislature has recognized that some districts may not be able to raise through taxation or otherwise sufficient funds to afford a good common education for their children and has in the exercise of its Legislative discretion determined that the minimum expenditure per pupil in any district should be $400. It has created a common school fund from which this minimum dollar expenditure is met. In *LeBeauf* v. *State Board of Education of Louisiana*, 244 F. Supp. 256, 260 (1965), it was held:

> "There simply is no right, privilege, or immunity secured to these plaintiffs by the Constitution and laws of the United States being in any way denied by these respondents when they allocate and disburse funds . . ."

In *Hess* v. *Mullaney*, 213 F. 2d 635-640 (1954), it was similarly held:

> "No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds."

As the court below found, at page 335;

> "Even if the Fourteenth Amendment required that expenditures be made only on the basis of pupils' educational needs, this controversy would be non-justiciable. While the complaint does not present a 'political question', in the traditional sense of the term, there are no 'discoverable and manageable standards' by which a court can determine when the Constitution is satisfied and when it is violated."

The alternative methods of financing suggested by the plaintiffs do not offer manageable standards that could be enforced by a court which would in any way better

insure an adequate education for the pupils of their district than has already been fashioned by the Illinois Legislature.

The best that any alternative would do, would be to lessen the disparity between per pupil expenditure or equalize such expenditure. We submit that to adopt the suggestions of the plaintiffs would not result in better meeting their educational needs but would merely tend to lessen the quality of education throughout the State of Illinois.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the decision of the Federal District Court should be affirmed.

Respectfully submitted,

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